IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 499 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRANLAL ALIAS BARBHUBHAI BHAIDAS

Versus

MANHARLAL ALIAS MOHANLAL HARJIVANDAS

Appearance:

MS KALPNA J. BRAHMBHATT FOR MS VASUBEN P SHAH
for Petitioner
MS SHILPA UNWALA FOR MR MUKUND M DESAI
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/09/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act, at the instance of the original defendant - tenant who was sued by the respondents

landlords for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlords had sued the tenant for a decree of eviction on various grounds.

2.1 The landlords had contended that they were entitled to a decree of eviction on the ground that the landlords require the premises reasonably and bonafide for their personal requirements, within the meaning of section 13[1][g] of the Bombay Rent Act, that the tenant was liable to be evicted u/s 13[1][k] of the Act since he was not using the premises for the purpose for which they were let for more than six months prior to the suit notice, that the tenant was liable to be evicted u/s 13[1][l] of the Act on the ground that the tenant had acquired another suitable residential accommodation, that the tenant was liable to be evicted for creating nuisance and annoyance, and that the tenant was also liable to be evicted on the ground that he was in arrears of rent for more than six months and was not ready and willing to pay the rent.

3. The trial Court after framing the appropriate issues on the basis of the pleadings of the parties and after appreciating the evidence on record, held in favour of the plaintiffs - landlords, and passed a decree for eviction against the tenant only on two grounds, namely u/s 13[1][k] and 13[1][l] of the Act, by recording findings to the effect that the landlords had proved that the tenant was not using the property for the purpose for which it was let for a period of more than six months prior to the suit notice, and that the landlords had proved that the tenant had acquired other suitable residential accommodation. The trial Court dismissed the suit of the landlords on other grounds.

4. The tenant, being aggrieved by the decree of eviction passed by the trial Court on the two grounds referred to hereinabove, filed an appeal before the lower appellate Court u/s 29[1] of the Bombay Rent Act.

4.1 The lower appellate Court reversed the finding of the trial Court on the finding of non-user, and found on the re-appreciation of evidence that the landlords had failed to establish that the tenant was not using the premises let out to him for more than six months prior to the date of the statutory notice. However, the lower appellate court confirmed the decree of the trial Court u/s 13[1][l] by holding that the tenant had acquired other suitable residential accommodation. Therefore, the

lower appellate Court confirmed the decree of the trial Court so far as eviction is concerned.

5. It is this judgement and decree of the lower appellate Court which is the subject matter of the present revision u/s 29[2] of the Bombay Rent Act.

6. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. Only a few salient features require to be noted. It is an admitted fact that the defendant - tenant had purchased one building in Ward No.2, Nondh No.1608 in Sangrampura, at Surat. This purchase is in the name of the tenant's son namely Amratlal. The question therefore is as to whether the landlord establishes that this purchase is a Benami purchase in the name of the tenant's son Amratlal, whereas the real owner is the tenant.

7.1 The lower appellate Court has examined the entire oral and documentary evidence on record with minute detail and has, in my opinion, rightly come to the conclusion that the building in question purchased in the name of Amratlal in fact belongs to the defendant tenant, since on the date of the purchase, the professed owner namely, the son Amratlal could not possibly have the funds necessary for the purchase. Even otherwise, the oral evidence of the defendant - tenant and the oral evidence of the son Amratlal are so inconsistent with the averments made in the sale deed itself, that it is just not possible to accept Amratlal as the real owner of the purchased property.

7.2 The purchase is reflected by the registered sale deed at exh.77, and the sale deed is dated 13th March 1978. It is pertinent to note that, on the date of the sale deed i.e. 13th March 1978, Amratlal was aged 20 years. What is pertinent to note that the sale deed exh.77 itself contains certain statements of fact and records the passing of consideration at different points of time. The sale deed itself reflects that, on the date of execution of the sale deed, only Rs.5,000=00 are paid, and that Rs.20,000=00 had been paid earlier (on the dates specified in the sale deed, about 1.1/2 years ago prior to the sale deed). Thus, on the date when the first payment of Rs.20,000=00 as part of the sale consideration was paid to the vendor, Amratlal was about 18 years of age.

7.3 Thus, it is to be seen how Amratlal had possession or access to Rs.5,000=00 on the date of the sale and to Rs.20,000=00, one and half years prior to the same.

7.4 When the evidence is examined in this context, we find that both the defendant - tenant and his son Amratlal have completely and totally failed to establish the aforesaid essential possession or access to the funds in question.

7.5 It is an admitted position that Amratlal was residing with his father - the tenant upto 1978. He is uneducated, and as per his own version, he was doing the work of diamonds on a commission basis. It is difficult to accept that a boy of hardly 18 years of age could be successful in such a trade, and further be successful to the extent where he would be able to save Rs.20,000=00 for making payment to the vendor of the house, as stated in the sale deed.

7.6 Further more, Amratlal asserts that he was doing such diamond work at the place of Ishwarlal Kantilal. However, said Ishwarlal Kantilal had not been examined as a witness. There is no other documentary or oral evidence on record that Amratlal was doing business of his own on a commission basis.

7.7 The lower appellate Court has rightly rejected the oral evidence of witness Amratlal Tulsidas at exh.82, as he is merely a chance witness, who has come to depose merely in order to oblige the defendant, and further more, has absolutely no documentary evidence in support of his oral assertion that the defendant's son was earning through the diamond business.

7.8 The transaction of sale and the passing of consideration as reflected in the sale deed exh.73, completely and totally contradicts the version put up in the oral deposition of the defendant and his son Amratlal.

7.9 The defendant's son Amratlal deposes that he had withdrawn the amount of Rs.20,000=00 from his maternal uncle Ishwarlal Nathubhai on the date of the sale deed at exh.77. He further stated that he had further borrowed Rs.5,000=00 from his relative named Vasantbhai. Thus, the defendant's son has attempted to show that he had from different sources brought together Rs.30,000=00 on the date of the sale deed. However, the sale deed discloses that only Rs.5,000=00 were paid on the date of the sale deed, and obviously therefore, the story about having collected Rs.30,000=0 on the date of the sale is unjustified, as also contradictory.

7.10 Further more, the lower appellate Court has found and in my opinion rightly so, that Amratlal's version of having borrowed Rs.5,000=00 from Ishwarlal Kantilal and another Rs.5,000=00 from his relative Vasantlal, is not supported by his so called lenders. In fact, on the date of the sale deed, Amrutlal had no need to borrow and accumulate Rs.30,000=00, since only Rs.5,000=00 was to be paid.

7.11 On a summary of the aforesaid evidence, the lower appellate Court was justified in concluding that the defendant's son Amratlal could not possibly have accumulated by way of savings (forming a small part of a larger income) of a total of Rs.25,000=00 at the age of 20 years, without having any regular business income, on the date of the sale deed, nor could he have owned or had access to Rs.20,000=00 a year and half prior to the sale deed. Obviously therefore, the entire purchase of this property was financed by the defendant - tenant, and that therefore, even if the property stands in the name of tenant's son Amratlal, in fact and substance, it is the property belonging to the tenant.

8. The next contention which is sought to be urged is that the said property is not "suitable" for residential purpose for the tenant, and therefore, all the conditions stipulated in section 13[1][l] are not satisfied.

8.1 It does not require much evidence or much imagination to come to a conclusion that the lower

appellate Court was completely justified in rejecting this contention. It is admitted that the rented premises consisted only one room, admeasuring 8 ft. x 10 ft. situated in a back portion of a larger house, that it had no water or toilet facilities, and it was occupied by the tenant, his wife, three sons and one daughter. As against this, the purchased property consists of three rooms on the ground floor, to which the defendant added a bathroom and also a lavatory. It is also admitted that this property has a facility of light, as also of water. Therefore, there can be no comparison between the area, the amenities and the facilities available to the defendant - tenant in the purchased property vis-a-vis the rented property. On these facts, there cannot be any controversy that the purchased property is far more suitable than the rented property in terms of area, as also in terms of amenities and facilities. This contention therefore does not assist the petitioner tenant in any manner whatsoever.

9. In the premises aforesaid, I find that the judgement and decree passed by the lower appellate Court is eminently sustainable and cannot be interfered with in the present revision.

10. This revision is therefore dismissed. Rule is discharged with costs.

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